

# Montana Transportation Commission

## December 6, 2007 Meeting

MDT Commission Room  
Helena, MT

### IN ATTENDANCE

Kevin Howlett, Acting Transportation Chair  
Rick Griffith, Transportation Commissioner  
Dee Winterburn, Transportation Commissioner  
Barbara Skelton, Transportation Commissioner  
Jim Lynch, MDT Director  
Jim Currie, MDT Deputy Director  
Loran Frazier, MDT Engineering  
Tim Reardon, MDT Chief Counsel  
Ann Pichette, Governor's Office  
Sandra Straehl, MDT Rail, Transit & Planning  
Kevin McLaury, FHWA  
Mike Duman, FHWA  
Lori Ryan, MDT

*Please note:* the complete recorded minutes are available for review on the commission's website at [http://www.mdt.mt.gov/pubinvolve/trans\\_comm/meetings.shtml](http://www.mdt.mt.gov/pubinvolve/trans_comm/meetings.shtml). You may request a compact disc (containing the audio files, agenda, and minutes) from the transportation secretary Lori Ryan at (406) 444-7200 or [lravn@mt.gov](mailto:lravn@mt.gov). Alternative accessible formats of this document will be provided upon request. For additional information, please call (406) 444-7200. The TTY number is (406) 444-7696 or 1-800-335-7592.

### ***OPENING – Commissioner Kevin Howlett, Acting Chair***

Commissioner Howlett called the meeting to order. After the pledge of allegiance, Commissioner Howlett offered the invocation.

Director Lynch introduced Barbara Skelton as the newest Transportation Commissioner for District 5. Ms. Skelton is from the Billings area. He stated MDT was thrilled with the selection of Barbara Skelton. The commission welcomed Commissioner Skelton on board.

### ***Approval of Minutes of the August 30, 2007 Regular Meeting and November 9, 2007 Conference Call.***

Commissioner Howlett presented the minutes from Regular Commission Meeting of August 30, 2007, and the Conference Call of November 9, 2007. There were no additions, deletions, or changes made to the minutes.

Commissioner Griffith moved to approve the Minutes as presented. Commissioner Winterburn seconded the motion. All four commissioners voted aye.

The motion passed unanimously.

### ***Agenda Item 1: Enhancement Program on MDT Right-of-Way.***

Sandy Straehl presented the following:

**Background:** The Commission approves Community Transportation Enhancement Program (CTEP) projects that are located on or adjacent to state designated streets and roads. The following CTEP projects are funded with the enhancement set-aside

of the Surface Transportation Program that is allocated by population to Montana's local and tribal governments. The communities select projects for funding with their allocations and provide required non-federal match. The program is based on an agreement between MDT and Montana local and tribal governments. The projects proposed for addition to the program are shown below.

**1. Old Prison Landscape – Deer Lodge** – This enhancement project will replace deteriorated sidewalk and curbs, replace landscaping, install a sprinkler system and restore and reinstall seven historic lamps. The location is along the east wall of the Historic Old Prison Museum Complex adjacent to Main Street, also known as Old Montana Highway 10 (S-275, R.P. 1.67 to 1.755) in Deer Lodge. Over the past 45 years there has been a large buildup of soil deposit occurring on the grass boulevard next to Main Street. The material has pushed above the existing sidewalks to the point where it has caused an accumulation of moisture pools. The resulting water runs under the old prison wall, eroding the structure. This project will remove the existing materials, including the deteriorated sidewalk and curb, grade the area to channel water away from the wall to the storm drains, replace the sod and sidewalk and restore and reinstall the historic lamp posts.

The estimated total cost of the project is \$22,314 consisting of \$280 for preliminary engineering and \$22,034 for construction. The City of Deer Lodge's CTEP allocation and local match will be the funding sources for this project. Including this project, the City of Deer Lodge will have obligated \$271,875 of the \$283,879 made available over the life of the CTEP program.

**2. Elmo East Sidewalks** – This enhancement project will design and construct approximately one-mile of 4-foot wide concrete sidewalks along the streets of Elmo. This project will be part of the Confederated Salish Kootenai Tribe road construction project funded by BIA Reservation Roads funds, which will improve almost one mile of gravel town streets into paved streets. The project will also include some landscaping and two on-system crosswalks on US 93 (N-5). The approximate location of the on-system crosswalks on US 93 will be located immediately south of First Street and approximately 300 feet north of Second Street. (R.P. 77.102 to 77.252).

The sidewalks on both sides of the street will enhance pedestrian movement within the town to the Head Start School, Tribal Health Facility, and the Kootenai Culture Center. The crosswalks will improve connectivity between the residential neighborhoods on the east and west side of US 93 (N-5).

The estimated total cost of the project is \$737,236 consisting of \$96,161 for construction engineering and \$641,075 for construction. The Flathead Reservation's CTEP allocation and local match will be the funding sources for this project. Including this project, the Flathead Reservation will have obligated \$1,089,883 of the \$1,208,274 made available over the life of the CTEP program.

**3. School Walkway – Hobson** – This enhancement project will design and construct an 8-foot wide bicycle/pedestrian path approximately 609 feet in length on the east side of Central Avenue (S-239, approximate R.P. .524 to .640) in Hobson. The path will connect the public school grounds to a paved commercial parking down the hill. Students currently walk along the side of the highway between the school and town. This project will provide a safe route for bicycle/pedestrian traffic to the school. The intent is to construct the path in conjunction with the Hobson-Utica highway rehabilitation project scheduled for 2008.

The estimated total cost of the project is \$16,896 consisting of \$3,367 for preliminary engineering, \$1,683 for construction engineering and \$11,846 for construction. The Judith Basin County CTEP allocation and local match will be the funding sources for this project.

**4. Sprinkler System – Hobson** – This enhancement project will install a sprinkler system on the islands of the boulevard of Central Avenue (S-239, approximate R.P. .33 to .547) in Hobson. The community plans to complete this “Water on the Boulevard” project prior to the Hobson-Utica highway rehabilitation project scheduled for 2008.

The estimated total cost of the project is \$24,975 consisting of \$280 for preliminary engineering and \$24,695 for construction. The Judith Basin County CTEP allocation and local match will be the funding sources for this project. Including these two projects in Hobson, Judith Basin County will have obligated \$229,558 of the \$233,676 made available over the life of the CTEP project.

**Summary:** This agenda item is for four enhancements projects that have portions on or adjacent to state designated streets and roads being proposed for commission approval using CTEP allocations to the respective local governments.

1. The *Old Prison Landscape – Deer Lodge* project is estimated at a total project cost of \$22,314. The project is located on Main Street (S-275) in Deer Lodge and will be developed in accordance with all federal and state requirements.
2. The *Elmo East-Sidewalks* project is estimated at a total project cost of \$737,236. The portion of the project that is on-system consists of crosswalks on US 93 (N-5) in Elmo. The project will be developed in accordance with all federal and state requirements.
3. The *School Walkway-Hobson* project is estimated at a total project cost of \$16,896. The project is located on the eastside of Central Avenue (S-239) in Hobson and will be developed in accordance with all federal and state requirements.
4. The *Sprinkler System-Hobson* project is estimated at a total project cost of \$24,975. The project is located on the boulevard of Central Avenue (S-239) in Hobson and will be developed in accordance with all federal and state requirements.

**Staff recommendations:** Staff recommends that the commission approve the addition of these projects to the program.

**Discussion:** Commissioner Griffith asked about the formula for allocation. Sandy Straehl said it was per capita. She said the allocations go to local governments and tribal governments. This was allocated to the Confederated Salish Kootenai based on the population of the reservation. Commissioner Howlett asked if there was also an allocation to Lake County. Sandy Straehl said there was. Director Lynch said they could combine those allocations. The tribal membership is the basis for the allocation to the tribes and the county membership absent the tribal membership is the basis for the allocation for local governments.

Commissioner Griffith moved to approve the Enhancement Program on MDT Right-of-Way. Commissioner Winterburn seconded the motion. All four Commissioners voted aye.

The motion passed unanimous.

## **Agenda Item 2: Intersection Improvement – Signal Modification - Add Left turn phase to signals at US 93 intersection sites in Kalispell and Polson**

Sandra Straehl presented the following to the Commission.

**Background:** MDT staff is requesting the commission approve the addition of a project to the program to modify traffic signals at four intersection sites on US 93 (N-5) in the Missoula District. Left Turn Phase Studies conducted for intersection sites on US 93 recommend that the addition of the left turn phase to the existing signals will aid in decreasing the number of vehicular crashes and increase safety at these intersections.

The intersection locations on US 93 (N-5) are:

***Kalispell:***

1. US 93 (R.P. 113.691) and Conway Drive – Southbound lane. This intersection serves the emergency entrance to the Kalispell Regional Medical Center.
2. US 93 (R.P. 114.109) and Sunny View Lane – Southbound lane. This intersection serves the main entrance to the Kalispell Regional Medical Center.
3. US 93 (R.P. 114.449) and Northridge Drive & Commons Way – North and Southbound lanes. Northridge Drive serves as the west approach to US 93 and Commons Way serves as the east approach to US 93 at this intersection.

***Polson:***

4. US 93 (R.P. 60.1) and 4<sup>th</sup> Avenue – Westbound lane. This intersection serves as the south approach to US 93 at this intersection.

MDT proposes using National Highway funds (NH) for this project. The total estimated cost for the project is \$173,987 consisting of \$24,695 for preliminary engineering, \$22,450 for construction engineering and \$123,475 for construction. The total estimated project costs include \$3,367 for incidental construction and \$18,987 in indirect costs. The Missoula District has sufficient NH funds in FY 2009 for this project.

**Summary:** MDT staff is requesting the addition of a project to the program that will modify intersection traffic signals at three sites in Kalispell and one in Polson on US 93 (N-5). The modification will consist of the addition of a left turn phase to the traffic signal at these intersections. A Left Turn Phase Study has been conducted that indicates that adding the left turn phase at the identified sites will help reduce crashes and increase safety.

**Staff recommendations:** Staff recommends that the Commission approve the addition of this project to the program

Commissioner Griffith moved to approve the Intersection Improvement Signal Modification – Add left turn phase to signals at US 93 intersection sites in Kalispell and Polson. Commissioner Winterburn seconded the motion. All four Commissioners voted aye.

The motion passed unanimous.

**Agenda Item 3: Overcrossing Bridge – Bicycle/Pedestrian  
Overcrossing Bridge – Pablo.**

Sandra Straehl presented the following to the Commission.

**Background:** MDT staff is requesting the commission approve the addition of a project to the program to construct a bicycle/pedestrian bridge over US 93 (N-5) at

R.P. 52) in Pablo. The bridge will provide safe passage for bicyclists and pedestrians crossing the highway by connecting the Salish Kootenai College campus on the east side of the highway with the Salish Kootenai College Headquarters on the west side of the highway.

Staff proposes using National Highway funds (NH) for this project; however MDT will pursue an agreement with BIA to fund a portion of the project using Indian Reservation Road (IRR) funds. The total estimated cost for the project is \$2,997,075 consisting of \$224,500 for preliminary engineering, \$336,750 for construction engineering and \$2,211,325 for construction. The total estimated project costs include \$224,500 for incidental construction and right-of-way and \$327,075 in indirect costs. The Missoula District has sufficient NH funds in FY 2009 for this project.

**Summary:** MDT staff is requesting the addition of a project to the program that will construct an overcrossing bridge on US 93 (N-5) to connect the Salish Kootenai College campus on the east and west sides of the highway. The total estimated project cost is \$2,997,075 using NH funds. MDT will pursue an agreement with BIA to fund a portion of this project using IRR funds.

**Staff recommendations:** Staff recommends that the Commission approve the addition of this project to the program.

Commissioner Howlett noted that it does not connect two parts of the college; it connects the college on one side and tribal administrative headquarters on the other side. Sandy said she would make that correction.

**Discussion:** Director Lynch asked Kevin McLaury about a special program regarding bridges on Reservations, would this qualify for that program. Kevin stated there were dollars available in the IRR Bridge Program which is part of the IRR program. Since it is on a Reservation and this is an IRR designated route, this program may be eligible for IRR funding depending on the allocation of the tribe for IRR funds. Director Lynch said he would not be interested in using existing IRR funding but was more interested in funding that would not normally come to the Salish Kootenai for other bridge programs that is not being used. Kevin McLaury said the new law for SAFTELU has changed; some states have used a significant amount of those funds so they have been used down. We can see if there are opportunities for additional bridge dollars that are not being used. Deputy Director Currie said if the pedestrian overpass does not qualify for the federal funds, there is the possibility of utilizing funds from one of the remaining projects in the area.

Commissioner Griffith moved to approve the Overcrossing Bridge, Bicycle/Pedestrian Overcrossing Bridge – Pablo. Commissioner Winterburn seconded the motion. All four Commissioners voted aye.

The motion passed unanimous.

#### **Agenda Item 4: Smelter Avenue – Black Eagle.**

Sandy Straehl explained there were separate funding processes required by federal law inside of the metropolitan areas of Montana – Great Falls, Billings, and Missoula. There is both a technical and a policy group that works inside those areas and projects have to move through those groups and be in the Transportation Improvement Program before they can be taken to the Commission Level. This project has moved through that planning process. She then presented the following to the Commission:

**Background:** The local officials of the Great Falls Transportation Policy Coordinating Committee (TPCC) and the Transportation Technical Advisory Committee (TTAC) have nominated a reconstruction project on the Urban Highway System using Surface Transportation Program - Urban (STPU) funding. This project is included in the approved Great Falls 2007-2011 Transportation Improvement Program (TIP).

This project would reconstruct Smelter Avenue Northeast (U-5204) through the unincorporated community of Black Eagle, between 10<sup>th</sup> Street Northeast (R.P 0.00) and 23<sup>rd</sup> Street Northeast (R.P.0.85) at the golf course entrance. The project would include reconfiguration of the skewed intersection at Wire Mill Road to a more traditional “T” intersection.

The estimated total project cost is \$3,394,440 consisting of \$388,385 for preliminary engineering, \$202,050 for construction engineering, \$559,005 for incidental and right-of-way and \$2,245,000 for construction. Utilizing current estimates there will be sufficient funds within the Great Falls Urban Highway Program funding to cover the cost of this project.

The 2007 Legislature awarded a Treasure State Endowment Program (TSEP) grant of \$365,000 to the Black Eagle Cascade County Water & Sewer District to partially fund replacement of the water main along this roadway. This work is anticipated to be done by the Black Eagle Water & Sewer District in advance of or concurrent with the proposed roadway construction.

**Summary:** The Great Falls TPCC and TTAC have nominated an Urban Highway System project from the approved Great Falls 2007-2011 Transportation Improvement Program (TIP). The project would reconstruct 0.85 miles of this route to an urban collector standard. The funding source is from the Surface Transportation Program – Urban (STPU).

**Staff recommendations:** Staff recommends the Commission approve the addition of this project to the program.

**Discussion:** Commissioner Griffith asked if this mitigates the concerns raised by Tom Smith. Director Lynch said there was some concern that they couldn’t get a water project unless there was a highway project to match. MDT recommends they not combine the two projects and the water project be done first; then the highway project would follow. The fact they didn’t tie the projects together would not impact what they are doing. Director Lynch said Mick Johnson had informed the community MDT has a way to give them some millings to put down the roadway if they chose to do that.

Commissioner Griffith moved to approve the Smelter Avenue – Black Eagle.  
Commissioner Winterburn seconded the Motion. All four commissioners voted aye.

The motion passed unanimous.

### ***Agenda Item 5: Rock Fall Mitigation – Rock Fall on MT 135, 20 Miles North of St. Regis.***

Sandy Straehl addressed the commission as follows:

**Background:** MDT staff requests commission approval to add a project to the program to mitigate a rock fall site on MT 135 (P-35, reference point 20.3), located approximately 20 miles north of St. Regis. This site has experienced rock fall events since this section of MT 135 was constructed in 1972. According to a report by the

Missoula Geotechnical staff rock falls will continue along a wedge shaped bedding plane that is oriented toward the highway.

Most of the rock that comes down at this site falls into the ditch behind the Jersey barrier. However, because the bedding plane creating the lower portion of the wedge is dipping slightly towards the highway, some of the rock is projected off of the wedge and onto the highway. The rock size that occasionally makes it onto the highway is generally 2 feet in diameter or less. Most of the rock fall events at this location seem to occur following significant rainfall events. A rock fall event on July 19, 2007, left two large blocks hanging precariously at the very top of the wedge. Both of the blocks are estimated to be 10 to 15 feet across and staff anticipates the blocks will eventually come down.

The Missoula Geotechnical staff is recommending MDT mitigate the rock fall hazard at this site by rock scaling, trim blasting, rock bolting, and adding additional rock fall protection in the ditch to reduce the rock fall hazard.

MDT staff proposes using Surface Transportation Program – Primary (STPP) funds for this project. The total estimated project costs are \$1,452,515 consisting of \$202,050 for preliminary engineering, \$96,535 for construction engineering, \$960,860 for construction, and \$193,070 for right of way and incidental construction. The total project costs include \$158,515 of indirect costs. The Missoula District has sufficient STPP funds in FY 2009 for this project.

**Summary:** MDT is requesting the commission approve the addition of a project to the program to mitigate a rock fall area located at reference point 20.3 on MT 135 (P-35) approximately 20 miles north of St. Regis. The scope of the project will include rock scaling, trim blasting, rock bolting and additional rock fall protection in the ditch. The estimated project cost is \$1,452,515 using STPP funds. The Missoula District has sufficient STPP funds in FY 2009 for this project.

**Staff recommendations:** Staff recommends the Commission approve the addition of this project to the program.

**Discussion:** Commissioner Griffith asked if this was a long-term fix for this problem. Sandy said yes it achieved long-term stabilization.

Commissioner Griffith moved to approve the Rock Fall Mitigation – Rock fall on MT 135, 20 miles north of St. Regis. Commissioner Winterburn seconded the Motion. All four commissioners voted aye.

The motion passed unanimous.

### ***Agenda Item 6: Slide Correction – Highway 200 East of Noxon***

Sandy Straehl addressed the Commission as follows:

**Background:** MDT staff requests commission approval to add a project to the program to design and construct a project to correct a slide on MT 200 (P-6, reference point 15.5 to 17) approximately one-half mile East of Noxon. A significant number of springs are located along MT Highway 200 (P-6) between reference point 16.2 and the Idaho border. These springs are contributing to the slide by reducing the strength of the soil and increasing the driving forces of the slide.

This slide site, known as the Cabinet Slide, develops a semi-circular crack in the eastbound lane on a regular basis. A culvert located at the crack location became plugged and no longer passes much water. The cracks in the roadway have required more frequent patching since the culvert plugged. An attempt to mitigate the slide at this location was made by performing a shallow dig-out and installing geotextile and

perforated PVC drainage pipe during an overlay and slope flattening project in 1997. Maintenance personnel noted that they have not observed any water flowing through the perforated PVC pipe. The guardrail has dropped more than a foot at this location indicating the pavement is moving down slope, however maintenance recently raised the guardrail and placed more fill along the shoulder of the road. The slope below the culvert outlet is saturated and water can be seen flowing across the surface down to the river.

The scope of the proposed project will include designing the appropriate fix for this slide, most likely to include removing and reconstructing a short stretch of the highway embankment and ground improvements to stabilize the slide mass and prevent future movement of the highway.

MDT staff proposes using Surface Transportation Program – Primary (STPP) funds for this project. The total estimated project costs are \$2,430,212 consisting of \$168,375 for preliminary engineering, \$252,562 for construction engineering, \$1,672,525 for construction, and \$336,750 for right of way and incidental construction. The total project costs include \$265,212 of indirect costs. The Missoula District has sufficient STPP funds in FY 2009 for this project.

**Summary:** MDT is requesting the commission approve the addition of a project to the program to address a slide correction located on MT 200 (P-6, R.P. 15.5 – 17) approximately one-half mile east of Noxon. The estimated project cost is \$2,430,212 using STPP funds. The Missoula District has sufficient STPP funds in FY 2009 for this project.

**Staff recommendations:** Staff recommends the Commission approve the addition of this project to the program.

**Discussion:** Commissioner Griffith asked if Loran Frazier had confidence in the geotechnical analysis and the recommendations put forth. Loran said he did and stated there would be more investigation as the project proceeds. Commissioner Griffith said he was particularly concerned about the road and water and not throwing money into a sinking hole. Commissioner Griffith asked why they were adding projects to the program two months after the Red Book process. Sandy Straehl said that the Red Book does not itself add projects to the program; it prioritizes projects that have previously been programmed. The week's worth of work establishing priorities, those projects had previously been added through other Commission actions; the preliminary engineering had been completed and the Commission had ready dates assigned to them, then we looked at the funding and prioritization of those projects. This adds projects into the program so that in future years they will have a ready date and you can decide during a future Red Book process how to prioritize that work. There is room in the program for this. Commissioner Griffith said he did not remember seeing \$2 million in Missoula's STIPP program for this. Director Lynch said that by approving this project, the Commission was essentially approving MDT to start the process to develop a program. The Commissioner would have that opportunity in a future Red Book process to program it and say when the dollars would be spent. In order for MDT to do any engineering or environmental or design work, they had to have the Commissioner's authorization. It will come back before this Commission at a later date. Commissioner Griffith said they had heard twice there was money left in the program. Sandy said there was more room in the Missoula program than any other. She noted that money had been set aside for preliminary engineering, right-of-way, and all the other phases of the project. The full cost of the project did not have to be covered in 2009.

Commissioner Griffith moved to approve the Slide Correction – Highway 200 Slide East of Noxon. Commission Winterburn seconded the motion. All four commissioners voted aye.



The motion passed unanimous.

### **Agenda Item 7: *SPEED LIMIT RECOMMENDATION* *Meridian Road to Reserve Drive***

Loran Frazier addressed the Commission regarding a speed limit request on U.S. 93 north of Kalispell between Meridian Road and Reserve Drive. The staff has completed the speed study and recommends a 45 mph beginning at Station 34+00, project F 270(7) (100' north of the intersection of Colorado Street) and continuing north to station 171+00, an approximate distance of 2.6 miles. The existing speed of 55 mph starts just north of Flathead Community College and goes past Reserve Drive to the bridge over Stillwater River. That area is continuing to grow and we recommend lowering the speed limit to 45 mph through that area. We have a letter of concurrence from the Flathead County Commissioners.

Commissioner Griffith asked if there was a car dealership in the area. Director Lynch said the car dealership was on the other side of Reserve Drive and the speed limit would extend beyond their property to the bridge over the Stillwater River and noted there were two car dealerships going into that location. There is DNRC land on section 36 that has had extensive commercial development, a new hotel, a new high school, Lowes, Costco, several banks, and across from that area Home Depot, Target, Hutton Ranch Estates, and others. There are three traffic lights in that particular area.

Commissioner Griffith moved to approve the US 93 Speed Limit Recommendation – Meridian Road to Reserve Drive. Commissioner Winterburn seconded the motion. All four Commissioners voted aye.

The motion passed unanimous.

### **Agenda Item 8: *Speed Limit Recommendation, Primary 89- Dillon***

Loran Frazier addressed the Commissioner regarding a speed limit recommendation on Primary 89, south of Dillon between Montana Street and I-15; the area south of Western Montana College beginning at station 50+00, project I 15-1(49) and continuing east to station 10+50, project F 387(14) (the intersection with Montana Streets), an approximate distance of 4,500 feet. This section of the roadway has never had a speed limit placed on it. We recommend a 50 mph speed limit on this section. We have a letter of concurrence from the Beaverhead County Commissioners.

Commissioner Griffith moved to approve the Primary 89 – Dillon Speed Limit Recommendation. Commissioner Winterburn seconded the motion. All four Commissioners voted aye.

The motion passed unanimous.

### **Agenda Item 9: *Speed Limit Recommendation* *US 2 Kalispell West***

Loran Frazier addressed the Commission regarding the speed limit recommendation on US 2 Kalispell West. Our recommendation is a 60 mph speed limit beginning at station 99+50, project F 58(19) and continuing east to station 290+00, an approximate distance of 3.6 miles. Then a 45 mph speed limit beginning at station 290+00, project F 58(19) (100' east of Rose Heights Lane) and continuing east to

station 355+00, an approximate distance of 1.2 miles. We wish to extend the 45 mph speed limit a little farther and then drop the speed limit to 60 mph. There is a school in this area that has a variable speed zone (Batavia School). We have a letter of concurrence from the Flathead County Commissioners and we recommend approval.

Director Lynch asked about the school speed zone stating there is a reduction where the speed limit is set for five days a week while school is in session with a yellow light flashing at 45 mph. However, it unflashes at 45 mph at the entrance of the state scale which causes some conflict. Would it be possible to extend that 45 mph flashing speed reduction beyond the scale since there are trucks leaving the scale having to accelerate immediately to 60 mph speed? That would allow the entrance of the scale to be at 45 mph at the same time the flashing 45 mph is operating for the school. Loran Frazier said that would be acceptable to extend that 45 mph speed limit. Director Lynch said it would still be 60 mph through that area except when the speed limit is operating for the school; it would be moving the speed sign about 200 feet to the east so vehicles won't be accelerating at the time the trucks are exiting the scale during the school year.

Commissioner Howlett asked for the wording to be clarified. Loran Frazier said they would recommend extending the 45 mph temporary speed zone from Batavia School to just past the weigh station.

Commissioner Griffith moved to approve the US 2 – Kalispell West Speed Limit Recommendation as amended to extend the 45 mph speed zone past the weigh scale at the flashing school zone sign. Commissioner Winterburn seconded the motion. All four Commissioners voted aye.

The motion passed unanimous.

### ***Agenda Item 10: Speed Limit Recommendation, Secondary 552, Huntley***

Loran Frazier presented a speed limit recommendation for Secondary 552 in Huntley. MDT recommends a 45 mph speed limit beginning at station 126+50, project S 422(4), an approximate distance of 2,650 feet. A 35 mph speed limit beginning at station 126+50, (150' north of the railroad crossing) and continuing to the Huntley urban district boundary at station 136+50, an approximate distance of 1,000 feet. For Huntley we would perpetuate the existing statutory 25 mph speed limit. No Commission action is required for this segment. Then a 35 mph speed limit beginning at station 159+00 and continuing northeast to station 167+00, an approximate distance of 800 feet. A 45 mph speed limit beginning at station 167+00 (700' west of Heath Street) and continuing northeast to station 182+00, an approximate distance of 1,500 feet. Then a 60 mph speed limit beginning at station 182+00 (900' east of Heath Street) and continuing northeast to the intersection with Old Hwy 312, an approximate distance of 4,200 feet. This is another section of road which has never had a speed limit set on it other than the 25 mph speed limit through Huntley. Staff recommends we approve this. We have a letter of concurrence from the Yellowstone County Commissioners.

Commissioner Griffith moved to approve the speed limit recommendation for Secondary 522 - Huntley. Commissioner Winterburn seconded the motion. Four Commissioners voted aye.

The motion passed unanimous.

**Agenda Item 11: Speed Limit Recommendation for MT 56 – Bull Lake**

Loran Frazier presented a speed limit recommendation for MT 56 through Bull Lake. The Lincoln County Commissioners requested we look at this. We did an engineering study which would set an inconsistent speed zone through this area. We do not recommend doing that. There is a statute that states if there is an existing speed limit we cannot raise it without the concurrence of the local governing body. They do not concur. Rather than an inconsistent speed zone which would confuse motorists through that area, we recommend a 55 mph speed limit beginning at station 31+00, project STPP 56-2(5) (milepost 17.2) and continuing north to station 205+00, an approximate distance of 3.3 miles. The Lincoln County Commissioners concur with the 55 mph speed limit.

Commissioner Griffith moved to approve the speed limit recommendation for MT 56 Bull Lake. Commissioner Winterburn seconded the motion. All four Commissioners voted aye.

The motion passed unanimous.

**Agenda Item 12: Speed Limit Recommendations for East Frontage Road, Crow Agency South**

Loran Frazier presented a speed limit recommendation for East Frontage Road, south of Crow Agency. We recommend a 35 mph speed limit beginning at the intersection with Makawasha Avenue in Crow Agency and continuing south to a point 300 feet south of the Little Big Horn River Bridge, an approximate distance of 2,000 feet; then a 45 mph speed limit beginning 300 feet south of the Little Big Horn River Bridge and continuing south to the intersection with US 212, an approximate distance of 1.5 miles. We recommend no change in the statutory 70 mph speed limit from the intersection with US 212 south to a point 400 feet north of the Garryowen Interchange access. We then recommend a 50 mph speed limit beginning 400 feet north of the Garryowen Interchange access and continuing south to a point 500 feet south of Fort Custer, an approximate distance of 4,400 feet. Then a 60 mph speed limit beginning 500 feet south of Fort Custer and continuing south to the end of the frontage road, an approximate distance of 1.9 miles. We have a letter of concurrence from the Big Horn County Commissioners. We recommend approval.

Commissioner Howlett asked if this area was within the boundaries of the Crow Agency Indian Reservation. Loran Frazier stated it was. Commissioner Howlett asked if there were any disputes with the way the traffic is enforced and asked if the Crow Tribe enforced traffic on that road. Would this create a potential conflict if we put a speed limit in effect? Loran Frazier said two members of the County Commission are members of the Crow Tribe and because of that MDT has not been required to have Tribal concurrence with the other speed zones adopted in the county. Director Lynch said the Crow Agency Law Enforcement has authority over this section, however the way they practice their authority is that they can actually close the highway and do safety checks not normally done on our state highways. Their actions are taken against members of the Reservation. If a non-member is pulled over it is referred to the Montana Highway Patrol. He said at this point there is no conflict.

Commissioner Griffith moved to approve the speed limit recommendation for the East Frontage Road, Crow Agency South. Commissioner Winterburn seconded the motion. All four Commissioners voted aye.

The motion passed unanimous.

**Agenda Item 13: Speed Limit Recommendation for Valley Center Road, Bozeman.**

Loran Frazier presented a speed limit request for Valley Center Road in Bozeman. We recommend a 45 mph speed limit beginning at the intersection with N. 19<sup>th</sup> Avenue and continuing west to station 80+00, project STPS 235-1(16), an approximate distance of 2,500 feet. This is for an area that is growing and being developed. Currently there is a 60 mph speed limit and a 50 mph speed limit through this section and we would like to lower it to 45 mph. We have a verbal concurrence from the City Manager

Commissioner Griffith asked if it was within the city limits. Loran Frazier said it was. Commissioner Griffith asked about the concurrence. Loran Frazier said it was from Debbie Arkel. Director Lynch said the City Manager is Chris Kulkowski. Commissioner Howlett asked if it had been discussed with the County Commission. Loran Frazier said MDT’s Traffic Engineer stated he had verbal concurrence from the city staff. Commissioner Howlett felt they needed concurrence in writing from the City. Director Lynch said they could approve the speed zone request with the contingency that they receive a letter of concurrence from the City. Tim Reardon said the Commission could put a date on it if they wished, or they could condition the request on receiving written concurrence from the City. If you make it contingent on any condition, then it is not going to take affect – there would be no signs, no traffic tickets would be enforceable until you make an official determination to change the speed limit. It is up to the Commission on how they would like to handle it; a letter of concurrence or the department to have an answer within a period of time.

Commissioner Griffith moved to approve the speed limit recommendation for Valley Center Road in Bozeman contingent upon receipt of a letter of concurrence from the City of Bozeman. Commissioner Winterburn seconded the motion. All four Commissioners voted aye.

Motion passed unanimous.

**Agenda Item 18: Liquidated Damages  
Oswego E & W**

Loran Frazier presented the following to the Commission regarding the Liquidated damages for the Oswego East and West project.

**Background:** Oftedal Construction of Miles City, MT overran the contract time by 39 days. We wrote the contractor on September 11, 2007 of the overrun of contract time. They were informed they had 30 days in which to respond if they intend to request a waiver from the Commission. They responded on October 5, 2007 requesting reduction of 32 days and attendance at the Commission meeting. We responded on October 19, 2007 to their request. Our recommendation is noted below.

**Summary**

Award date	09-JUL-2004
Permission to proceed date	09-AUG-2004
Work began	05-OCT-2004
Work completed	03-MAY-2007
Contract time	150 working days
Time used	193 working days
Work extensions	4 working days

<i>Overrun</i>	39 day/s
<i>Contract amount</i>	\$7,011,759

**Staff recommendations:** We recommend assessing 39 days at \$2,624 per day for a total of \$102,336.

At Commissioner Howlett's request Loran presented some background on liquidated damages, contracts and contract time. When MDT sets up a contract there are calendar days and working days. This particular contract was a working day contract. When a contract is set there are a certain number of working days in the contract for them to accomplish the work. The principle point of the contract is to construct the highway within the time allotted. The reasons for that are several: there are contractors out there who could be bonded and could bid everything we have for the year, and if we don't put a time on completion of the project, they could take five or six years to do it. So we put the time to govern the completion and level the playing field so that one contractor doesn't tie up everything. The other reason is to get it done to not disrupt the public use of the roadway. So we have working days established. With that we have a description and specifications for chargeable working days. Those are defined from the Notice to Proceed. Charge time is defined as a working day which is a day that weather allows work, and is not a Sunday or Holiday.

This project was a reconstruction project of US 2 – grading, gravel work, and pavement, erosion control, and signing and striping. This was a working day contract for a reconstruction project on Hwy 2 in Oswego, approximately 8 miles and the working days were 150.

Our specifications allow time for winter shutdown where we don't charge time from November 15<sup>th</sup> to April. This particular job was advertised in the summer and we had a notice to proceed on August 9, 2004. In 2004 there was an issue with getting 404 Permits from the Corp of Engineers to do work in wetlands and around waters of the U.S. We need the 404 Permit before you can start doing the major dirt work. We had a problem getting that Permit and we let the project contingent on getting the permit. We did not get the 404 Permit until October 4, 2004. Normally we start charging working days and time, but in this case we didn't charge time until October 5, 2004, after the 404 Permit was issued. We then charged 17 working days in this time period up to November 15<sup>th</sup>. We then suspended time for the winter. In the following year on April 11, 2005, the contractor moved in three scrapers and started working and we started charging time on April 18, 2005. We then charged time through the summer all the way up to October 25, 2005, when we by mutual agreement had an early shutdown. We then charged them 106 working days in that timeframe, so the total time was 123. The following spring on April 11, 2006, they started milling and installing pipes and we started charging time on April 26, 2006. On June 8, 2006 we ran out of contract time. The 150 working days went through two seasons and we ran out of time. Between April 26 and June 8, 2006, we charged 27 working days. The project wasn't quite done yet so between June 11 and June 17 they were hauling gravel, placing CTB, putting in rip-rap, etc, and we charged five (5) working days. Therefore the total working days went into the negative, meaning we went past the contract time and moved into liquidated damages. Then we moved into the seal and cover and striping which added another 30 days, and then they continued with fencing and erosion control and we charged three (3) working days. That put the contractor into 33 days of liquidated damages.

We then suspended time at that point and did not charge any time until they came back to place the epoxy paint on September 5-8. There were four working days however, in Change Order No. 5 so we gave them four days of contract time and didn't charge any working days until they came in and seeded for two (2) days, and we charged two (2) days. That brought the total of liquidated damages to 35 days. We

charged no time from October 6, 2006 up until April 30, 2007, when they came in and seeded for four (4) more days, which brought the liquidated damages to 39 working days.

The staff feels they have assessed working days and time correctly and we recommend assessing 39 days at \$2,624 per day for a total of \$102,336. We have sent a letter to the contractor and we have received a letter back stating they do not agree with us.

Commissioner Howlett asked if there was something more the contractor could have done on the job to be more efficient; was there some part of the work you can identify that caused them to not finish within that timetable? Loran said that in reviewing the documents, there were quite a few notes from MDT's project manager asking the superintendent when they were going to bring in more equipment, and informing them they were getting short on time. Commissioner Winterburn asked how you decide how many days it will take to do a project. Kevin Christianson, MDT Construction Engineer, stated there is a process used for standard production rates that give the number of days for the contract. In looking at the timeline of the contract, the job went through two full seasons before contract time ran out. For a job this size, that was a sufficient amount of time. Commissioner Winterburn asked if they considered the geology of the project. Kevin Christianson said yes. Director Lynch said there were also times when MDT recommends a shorter period of time for other reasons which require the contractor to work more than normal. An example of that would be the Beartooth Highway which had a very short window of completion.

Commissioner Howlett asked if the Commission was allowed to consider anything more in this matter. Tim Reardon said according to the specifications The Commission cannot receive any additional evidence that was not presented to the department and the district prior to coming before the Commission. The department had to have an opportunity to evaluate any justification or explanation prior to the matter coming before the Commission. Commissioner Howlett asked if it was appropriate to entertain a presentation by Oftedal Construction. Tim Reardon said absolutely; they can explain the detail provided in the letter to MDT, they just can't add anything else.

***Cam Lundvy, Oftedal Construction addressed the Commission.*** He said this is not the venue he typically likes to resolve these things, but that is the way the specifications are written in Montana. I want to make sure the Commission understands our point of view on this. We don't say there weren't enough days; there were adequate number of days under this contract. Did we perform to the best of our ability? Probably not; it is a difficult place to work, and difficult to get people. Part of this scheduling issue was that we bid this job in June of 2004 with the intention of starting work on August 9, 2004. We were not able to start because the 404 Permit was not obtained. We made the decision, as a company, not to move equipment up there without the Permit. It would be somewhat foolish for us to move a big fleet of machinery up there and let it sit. We kept our equipment in Wyoming doing other jobs with no idea when the Permit was going to show up. I think it was October 4, 2004, at 3:31 p.m. when MDT received the permit. The very next day they began charging time, which to a Contractor, we can't start a job on a day's notice; it takes weeks to move that kind of equipment up. Again it was October 5<sup>th</sup> when they began charging time. In Oswego, Montana, winter comes early. We made the decision not to go up there that fall to work for what ended up being 17 working days. It would have taken us half that time to show up and get going. We requested that we not be charged time from October 5<sup>th</sup> through the winter shut down because it just wasn't feasible for us to get up there and do something. Typically you bid the job six weeks before the Notice to Proceed and you have six weeks to get things going. In this case we had no time. That is the 17 days in 2004 that we would like to not be charge for.

In going through what MDT did, they did a good job but the only comment I have is there was a lot of time in here where they showed no time charged. That wasn't out of the goodness of their heart or because we requested it, the majority of it was bad weather days. We had a huge amount of weather days on this job. That doesn't really enter into when the job got done; that is just the way things worked out.

The second point is in the Spec Book, Article 108.08 of the Standard Specifications, says the Commission when reviewing liquidated damages up to when work is "substantially completed." I wrote to MDT stating that as of July 15<sup>th</sup> the road was paved, chipped, rumble striped; there was no traffic control after that date. We did some minor work, i.e., a little bit of fencing and seeding and erosion control. So my question is what is the definition of "substantially completed." If the road is open and everything is done and traffic control is out of the way and we are out working on fencing, to me that is substantially completed. The work we did from July 15<sup>th</sup> on was about 1% of the contract; so it was 99% substantially complete dollar-wise.

So those are our two main points – the 17<sup>th</sup> days in 2004 when it wasn't feasible for us to get up there and do anything. Then the 15 days after the road was paved, chipped, swept, and open to traffic. That totals 32 days and leaves seven (7) days we are responsible for and we have no problem with that; things didn't go well and we didn't get done as quickly as we would have liked to. However, I don't feel that Oftedal should get charged for the days in 2004 when we just flat couldn't get anything done in that time.

To go a little further, by moving the start date back, it pushed the completion date essentially to July 15<sup>th</sup>, which is the middle of the summer and these contracts have seeding dates and you cannot seed during that time of year; you have to wait until fall or spring. So we were not able to do the seeding which amounts to six (6) days we got charged for after we were completely gone just because we could not do that seeding while we were doing the cleanup work at the end of the project. Had the contract started August 9, 2004, with the Notice to Proceed date, we would have finished up and our days would have run out during the seeding date and we could have been doing that seeding while we were getting charged for the fencing and erosion control, etc. So there are six (6) days there that may or may not come into play depending on your definition of "substantial completion".

Commissioner Howlett asked Director Lynch to address the definition of "substantially complete." Kevin Christianson said that generally speaking on most contracts we don't define "substantially complete" we simply charge contract time based on the contract requirements. There are some contracts where we do define "substantially complete" and those are contracts that are very invasive to the traveling public, in high traffic areas. Normally in those situations we will have a portion of the contract with a tight timeframe and we will define "substantial completion" as that point which traffic is restored to its normal flow and there is no work going on that disrupts traffic. The liquidated damages are set to offset our additional construction engineering costs because a contractor is working beyond the allotted contract time. That was the case here.

Discussion: Commissioner Griffith said in looking on the schedule and from 4/18 there were three scrapers; is that all that could happen on the job during that period of time, which is almost 100 days? Cam Lundvy said it was not a scrapper job, it was a truck job. We did 90% of the work with highway trucks. Again my argument isn't with the days we were working; it is with not being able to work in the fall. What happened from then on it was up to us to get the job done in the time allotted. I just don't think the time should not have started when it did. Commissioner Griffith said there was 100 days where there wasn't much work going on. Cam Lundvy said there was a lot of work going on; it was a belly dump job and it was all truck work and that was the bulk of the work. The thing that is not showing is that it takes awhile to get

the job off the ground. We didn't start in 2004 as I said before. I can go through the days, but I'm sure between when they started charging time on the 18<sup>th</sup> and the time the trucks showed up two and half months later, I would guess we had a lot of weather days. You can see that this job was set up for 150 working days and it ended up going almost two full seasons which is roughly 300 working days just because of weather and that obviously expanded the length of the job. We weren't charged those days and that is not an argument but that is why this job stretched out so far. I don't know if MDT looked up the total number of weather days on this job but it was substantial.

Commissioner Howlett asked if the Commission does nothing do the liquidated damages stand. Director Lynch said yes otherwise you have to take action to change it. Commissioner Howlett said it has been framed in well and by the contractor's own admission it was plenty of time to get this project done. There is an issue of the contract start date and the 404 Permitting, and I think we might want to consider some relief based on that. Other than that the bulk of those days should stand. Kevin McLaury asked if 404 Permitting was a common problem through that timeframe or just specific to this job and if it was more common, how was it handled with other contracts? Loran Frazier said it wasn't common with every job but there were a number of them in 2004 because of the change in regulations with the Corp of Engineers; they were not as timely in giving our Permits. Our approach to that was that we did not start charging contract time until the permit was issued. Kevin McLaury noted they were consistent with all other contracts that had issues like this.

Commissioner Griffith moved to approve the Liquidated damages NH 1-9(38)573 OSWEGO – E & W. Commissioner Winterburn seconded the motion. All four Commissioners voted aye.

Motion passed unanimous.

### **Agenda Item 14: Letting Lists**

Loran Frazier presented the proposed letting list for the months January through June 2008. The staff recommends the approval of the letting list.

Commissioner Howlett asked Loran to explain Letting Lists. Loran Frazier said that letting a job meant to advertise and let the projects for contract. Most projects are advertised for 30 days. We receive bids, open the bids, and let them for contract. At letting we read the apparent low bidder, we then review the contract and make sure they meet all the requirements, then we recommend award for that contract. These lists are what we foresee for projects that we would like to have advertised. This is a snapshot, and we cannot foresee details that might change in the future, such as not having the federal funds allocated for the project. This list is our goal if everything falls into place perfectly.

Commissioner Griffith moved to approve the Letting Lists. Commissioner Winterburn seconded the motion. All four Commissioners voted aye.

Motion passed unanimous.

### **Agenda Item 15a: Access Modification FR 28-2(10)91, 0408-010-000, Boyd – Rockvale, Carbon County**

Loran Frazier explained that this was an access modification for a section of highway with an access control resolution in place. We've received applications from two landowners requesting approaches on the Hwy 212 (Ralph Spence and Matthew and



Rhonda Costello). One of them is southwest of Joliet and the other is northeast of Joliet on Hwy 212. Our staff has reviewed the request and determined these additional approaches will not adversely affect the safety and operations of the road. We recommend the approval of both approaches and the amended resolution to allow these approaches.

Commissioner Griffith moved to approve the Access Modification, FR 28-2(10)91, 0408-010-000, Boyd-Rockvale, Carbon County. Commissioner Winterburn seconded the motion. All four Commissioners voted aye.

Motion passed unanimous.

**Agenda Item 15b: Amended Access Control Resolution  
M 1027(3), 0674-003-000 Hilltop Road  
Extension Billings, Parcel 45 and 46**

Loran Frazier explained this item was to amend an Access Control Resolution on Hilltop Road Extension in Billings. We've received an application for an approach that would serve property at the intersection of Hilltop Road and Main Street. MDT agrees with the conclusion of the City of Billings that a right-in/right-out approach on Hilltop Road would be acceptable. MDT staff recommends that we approve and execute the Amended Resolution which allows this approach contingent on the City's conditions of a right-in/right-out approach being adhered to.

Commissioner Griffith moved to approve the Amended Access Control Resolution M 1027(3), 0674-003-000, Hilltop Road Extension – Billings, Parcel 45 and 46 contingent on the City's conditions of a right-in/right-out approach being adhered to. Commissioner Winterburn seconded the motion. All four Commissioners voted aye.

Motion passed unanimous.

**Agenda Item 16: September 2007 Certificates of Completion**

Loran Frazier presented the Certificates of Completion for September 2007. We have \$11,350,000.00 total for several projects. The staff recommends approval.

Commissioner Griffith asked if the highway comes with any warranty. Director Lynch said there are certain aspects of the projects that we are responsible for, i.e., stripping, etc. It isn't like a builder's warranty or a public works contract where you have a one-year warranty period. Commissioner Griffith said there were some projects that have the appearance of not being completed, and was wondering if the Certificate of Completion meant they were absolved of all the work that needed to be done on a particular project. Director Lynch said other than some extended warranty periods per specifications, yes they were considered complete. Commissioner Griffith asked if any maintenance needs would become the responsibility of the Department and not the contractor. Director Lynch said yes. That is why MDT defends the specifications because they are building the roadway per our direction and we are responsible for it.

Mike Duman said they have experimented with warranties in the past. Any time you transfer risks it always comes with a cost, so the idea would be to put that burden back on the contractor for a period of years to maintain that roadway to acceptable levels. It seems like a good idea up front, but you pay for that up front; you don't get any of that free. So it is a balancing act. If you are going to put that burden on as a warranty, it comes with a cost. Tim Reardon said that typically you see a warranty on a design-build which is more prone to warranty language in the contract. One of the

problems in a design, bid and build is that throughout that process the department is inspecting, monitoring, and administering a contract, so as MDT signs off on certain elements of completion and meeting specification requirements, along the way you are starting to absorb that. Mike is saying that the risk shift in design-build was intended to do that; it is a known cost. The trade-off is you typically get things done faster with perhaps some innovation that benefits the industry as a whole including the agency. You can put warranty into a specific item, i.e., a hard industrial type item that usually the supplier is going to have to warrant as opposed to the contractor.

Commissioner Griffith asked about seeding. Director Lynch said it depends if they meet the contract terms and we accept it. Again we are back to the supplier. Commissioner Griffith said if it apparently meets the specifications but you don't know for six months to a year if the seeding will take. Mike Duman said that is true and we put a two-year plant establishment in the contract but the best approach is to make sure we have the time and season for planting and the type of material you put in there.

Loran Frazier said before we bring the Certificates of Completion to the Commission, if it is a federal aid job with oversight, we get our federal representation to drive through the job with the construction engineer to see if everything is acceptable. If it is not oversight, we have our construction engineer go over the job with the project manager and the contractor and they identify things that need to be fixed. The Certificate of Completion releases the contractor's bond and any money we may still have obligated for this project to free up what is left over and put it back in the pool to use on other projects. We have all the materials certifications but what has been taking us the longest is getting all the paperwork in order for the materials supplied. If the project looks like it is done and the contractor has packed up and gone away and a problem arises with the job, i.e., dips in the road, we can still bring them into fix it.

Commissioner Griffith asked about storm water pollution and prevention. DEQ doesn't buy off on the permit until you've established growth and they've accepted that and obviously you can't have that done before the Certificate is issued. Loran Frazier said we have the contractor go out and maintain those while the contract is in effect, but when we buy the project, they are done. If the vegetation isn't all there, then it is MDT's maintenance and we maintain those erosion control features. Director Lynch asked about the permit process change; doesn't the contractor now have to get the permit? Loran Frazier said yes. So if we issue a Certificate of Completion on a project, the contractor is still answerable to DEQ and has to live to the conditions of that agreement. Loran Frazier said when DEQ is done, they transfer it to MDT. That is something new. Sandy Straehl said there is a small program that has been established where we are using federal aid monies to make sure in the long-term there are some federal resources available to go in and revegetation and address the long-term best management practices in terms of re-seeding and vegetation. In some cases it doesn't take because of weather conditions or moisture conditions, so there is a chargeable account with money available for each district to go out and make sure there is revegetation. Mike Duman said you can imagine with a sizeable rain event, those VMPs do get compromised. Commissioner Griffith said he just assumed there were warranties.

Mike Duman said he quickly ran some numbers between the let numbers and the final costs and I'd like to compliment MDT. The overruns were less than one percent – point nine percent (.9%) cost difference. He said for the construction industry that is a very, very low number and complimented the department on their oversight on their projects and controlling costs. Director Lynch said the department received national recognition for their efforts in that area. Commissioner Howlett said they were to be complimented on the way they manage their projects; it is a credit to the people of Montana.

Commissioner Griffith moved to approve the Certificates of Completion for September 2007. Commissioner Winterburn seconded the motion. All four Commissioners voted aye.

Motion passed unanimous.

### **Agenda Item 17: Change Orders**

Loran Frazier presented the change order for the month of September 2007 and total \$1,187,911.80.

Loran pointed out that the change orders were running about four percent. That number is tracked so we can manage our plans. There are a couple of Change Orders I want to point out for the month of September. In the Missoula District, the Change Order is less than \$5,000. There is a Change Order on Rock Creek Interchange where we suspended the work time on that contract for public safety and convenience because there was a forest fire in that area. There are two Change Orders in District One on Big Mountain Road. Both of them related to the height of a retaining wall (\$443,000 and \$81,000). In looking through the Errors and Omissions, there was a mistake in the plans for the retaining walls not having enough height to account for the impediment needed for the foundation. In District Two in Big Sky we have \$111,000 Change Order where a well-known landowner filed an injunction against placing millings from our project on a county road so we had to find another county road to put the millings on. Staff would recommend we approve the Change Orders for the month of September 2007.

Commissioner Griffith moved to approve the Project Change Orders for September 2007. Commissioner Howlett seconded the motion. All four Commissioners voted aye.

Motion passed unanimous.

### **Agenda Item 19: 2008 Proposed Commission Meeting Dates**

The proposed 2008 Commissioner Meetings Dates are:

February 28, 2008

April 24, 2008

June 26, 2008

September 18, 2008 – P-3

November 3-7, 2008 (TCP and Commission Meeting)

December 4, 2008

Commissioner Howlett said the P-3 meeting in September conflicted with another event. He thought the last week of the month would be better. If the September date could be left until the next meeting, he would have more information. Director Lynch said they could always adjust the meeting dates. February 28<sup>th</sup> was set for the next meeting date. The other dates would be approved at that meeting.

### **Agenda Item 20: Commission Discussion**

Director Lynch discussed the Reauthorization of the Appropriation and said it seemed to be following the same process as last year. MDT has done a very good job of getting work ready to bid in the months of January, February, March, and April, and it is unfortunate when we don't get a full appropriation early enough to do that.

The Continuing Resolution is up December 16<sup>th</sup> and we are hoping there will be enough dollars in that to continue to bid early. If it doesn't happen then we are going to move projects week by week until that money comes in rather than cancel a whole month's project. We had to do that last year. We will know in a couple of weeks how much money we actually have to see what we can bid in January and February. Because of this there has been a lot of concern by the construction industry and rumors floating around regarding state highway funds and federal funds. We had a meeting with the construction industry to explain to them where we are in the State Revenue Fund, and we are fine with that fund, and also explain to them where we are in federal dollars and what we anticipate for the coming year and the timing of those federal dollars. It was a very good meeting. If we get our full appropriation we are looking at spending \$230,000,000 for the next construction season. That is an increase over the previous years.

The practice of bidding early is something fairly new. In 2005 we changed our philosophy and tried to bid as much work early as we could and we had the federal dollars to do that. But in 2006 we didn't get the money. We still want to bid work as early as we can and though the construction industry doesn't appreciate it they do understand where we are coming from and why that is the case. It is going to be a problem for us as we move forward and we are hoping that congress realizes that this is a very important industry across this country and they get it funded.

I have a Revenue Transportation Subcommittee meeting tomorrow afternoon. During the off years the Legislature appoints subcommittees and one of them is the Revenue Transportation Subcommittee. They can call upon the director to come to the meetings and they can ask me anything they want regarding transportation. This meeting is to report to them the condition of our funding. I will explain to them what is happening with the appropriation this year and the trends we see for reauthorization.

Tonight I have a meeting in Missoula that stems from our Comprehensive Transportation Plan. One of the areas of action was to identify high-crash corridors across the state and take that information to the community. I was designated as a champion of that particular action. We've done three meetings and this will be our fourth meeting. We will present to the Missoula community what is happening in their community traffic-wise. We will show some trends and answer questions during the first half of the meeting. Then in the second half we explain what the department is doing as far as enforcement, education, engineering, and the emergency medical services in their community and ask for their input. They have been very productive meetings and the community appreciates what we are doing. Hopefully we will get some good feedback and response from the community.

Reauthorization is really close. Even though we say 2009 there are already trends going forward to move this. There are trends nationally that are not good for the state of Montana. The Department of Transportation has voiced our concern with several of those. We formed a five-state coalition between rural state with similar problems and we've come together and stood strong on issues where we are represented in the national forums. One issue is gas tax which is not good for Montana. Another issue is these corridors and different silos for funding. The State of Montana and most other rural states have an advantage of a percent share of the total program and we are better off rather than breaking the funding into those silos. We are going to be encouraging our delegation to increase the core dollars and leave the state with the opportunity to decide where the needs are. Montana has a very aggressive asset management system to protect our roadway infrastructure and the more silos we have, it really is a hindrance to us to do that. Selfishly in our case we would rather see more dollars going into the core program than being broken out into special programs. An example of that is what just happened with the discretionary money; almost one million dollars in discretionary money that is normally given to Legislators to give back to their states for programs, Montana

always did very well and we were prepared to handle that money, but this last year the discretionary money was given to the U.S. Department of Transportation and they felt the needs were bigger in six major metropolitan areas and States like Montana didn't receive what they normally would get. We are bringing that type of activity to the attention of the federal delegations and hope we can swing that pendulum from earmarks to no earmarks to somewhere into more of an equity position that helps our state and other rural states.

Director Lynch said he just attended a Safety Forum Meeting in Bismarck, North Dakota, which talked a lot about highway safety. This was one of the best meetings I've attended. There are two areas we need to be concerned about (1) the fact that the age of our drivers is increasing, and (2) the placement and size of the signs and the placement of capital letters versus lower case letter that make them easier to read. Montana increased the size of our letters on signs a couple of years ago. Another area we have to pay attention to is that most of us learned to drive long before our first driver's safety course but today's young drivers do not have that opportunity. For the most part the driver's first experience behind the wheel is in driver's education. So we are putting drivers on the road that have far less experience than you and I had. So there is a strong look at driver's education and graduated driver's licenses. There is also discussion about what to do for existing drivers. Rather than every six years coming in and getting your picture taken and walking out with another six year license, there should be some training for existing drivers with new technology of simulators. Commissioner Griffith said not only do you have aging drivers but they are driving motor homes. Somehow we need to do some driver's training for people to understand the complexities of the issue. Director Lynch said the way to be successful is not to say driver's training is for older people; we just need to look at the way we train and educate all of our drivers. Commissioner Griffith said he thought that motor homes should have a different classification. Director Lynch said there was a fatality in Flathead County with a motor home last summer. It was tragic. He came out of a convenience store and crossed over a pedestrian crosswalk and ran over somebody. So visibility is a big issue. Commercial truck drivers are trained to deal with that type of thing. Commissioner Howlett though recurrent training is important for safety.

The other area that is an up and coming trend in safety is camera enforcement. That is a tuff sell in Montana but there was a lot of discussion about the benefits of camera enforcement. Commissioner Howlett said the ads Director Lynch was doing for driving under the influence were very effective and noted he brought a lot of credibility to that program.

Director Lynch said they were able to present the Native American Highway Safety Program for Montana. There were several people representing different Reservations in other states that saw the presentation and were very excited about it and are approaching MDT to see how they can do some thing in their states. We are basically empowering the Indian Reservations with the information and they are setting the program and deciding what works in their area and what is effective. Even though it is early, I'm confident in saying we are seeing some improvements on our Reservations because of this program and that is encouraging.

Kevin McLaury said he just came back from a leadership course in Washington D.C. where there was a presentation given comparing accident rates in California and South Dakota, called the Simpson Theory because the way it calculated the numbers California was lower than South Dakota. If you break between rural and urban, looking at those numbers in a different format, the numbers in South Dakota are far better than California. It is how the numbers are put together; so there is some caution when those statistics are thrown out. Director Lynch said it had brought a lot of national attention to what is happening and that is a benefit. Even though Montana has been unfairly criticized overall it was probably a benefit because it allowed some additional education.

Director Lynch reminded the Commission of their decision regarding Lamar Outdoor Advertising. Lamar Advertising took that decision to District Court in Billings who said MDT was wrong and granted Lamar permission to put up their signs. MDT has until January 28 to decide if we are going to appeal the decision. Commissioner Winterburn said she felt the only way to stop that decision was to create some sort of statute. Director Lynch said there was a lot of confusion on the definition of an electronic billboard versus the rule that says no electronic billboards. It comes down to the definition of what an electronic billboard and a variable message. Commissioner Winterburn said the issue seemed to be whether it caused safety problems. If we could have established whether it caused a safety problem or an aesthetic problem because those were the two things we had to work with. Commissioner Howlett said it came down to a community standard for aesthetics. If you ask people in Missoula they would say none of them are aesthetically pleasing but if you ask people in Billings they are tolerable of them. Director Lynch was placed between a rock and a hard place. Commissioner Howlett said that if the court ruled then they should have explained what errors we had in our system so we don't make them again. Director Lynch said they were hoping they would either refer it back to the rulemaking process or establish how they came to their conclusion. They basically said we were arbitrary in our position to not grant the sign. Kevin McLaury said from a national perspective Federal Highways has been somewhat silent on this issue. There have been some studies by the industry, one from a university and one from a private consulting firm, that say there are no safety issues in those signs. But the industry did sponsor those. As far as The Federal Highway Administration is concerned, at this point the guidance remains that there are no moving lights or intermittent signs allowed. Our position is that LED signs are not intermittent but the states have the final word. There are states that allow no billboards whatsoever within the boundaries of their states. There are states that are not allowing any LED signs. So there is a whole gambit of where these go. It is going to be an interesting issue across the nation. Director Lynch said they are looking at the possibility of some more rulemaking. We will bring that back to the Commission.

## **Agenda Item 22. Public Comment**

There was no public comment.

### **Adjourned:**

Commissioner Howlett wished everyone a happy holiday. Commissioner Howlett adjourned the meeting.

Commissioner Howlett, Acting Chair  
Montana Transportation Commission

Jim Lynch, Director  
Montana Department of Transportation

Lori K. Ryan, Secretary  
Montana Transportation Commission